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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 FRONTIER AIRLINES, INC.,

6 Plaintiff,

7 - against -

8 AMCK AVIATION HOLDINGS IRELAND

LIMITED, ACCIPITER INVESTMENT 4

9 LIMITED, VERMILLION AVIATION (TWO)

LIMITED, WELLS FARGO TRUST COMPANY,

10 N.A., solely in its capacity as OWNER

TRUSTEE, and UMB BANK, N.A., solely in

11 its capacity as OWNER TRUSTEE,

12 Defendants.

13 CASE NO.: 1:20-cv-09713-LLS

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15 \* \* \* C O N F I D E N T I A L \* \* \*

16  
17 ZOOM VIDEOCONFERENCE

18  
19 October 25, 2022

20 10:03 a.m. EST

21 DEPOSITION of Expert Witness,  
22 DR. KEVIN NEELS, before Melissa Gilmore, a  
23 Stenographic Reporter and Notary Public of the  
24 State of New York.  
25

A P P E A R A N C E S:

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2 associated with the spin-off.

3 So I worked on part of that, looking  
4 at, you know, different intangible assets that  
5 were associated with the regional airline.

6 Q. Do I understand correctly that, at  
7 that time, you were providing some inputs or  
8 some valuations that would be relevant to the  
9 income tax for Continental Airlines?

10 A. That's correct.

11 Q. How long ago was that engagement?

12 A. That was probably about ten years  
13 ago.

14 Q. Does any other work come to mind  
15 that is related to the preparation of income  
16 taxes?

17 A. Not that comes to mind. You know, I  
18 know in various points in various engagements  
19 I've had to, you know, look at tax returns or  
20 pull information from them, but that's the  
21 only -- that one case that I mentioned was the  
22 only one that comes to mind. It really is  
23 related to preparation of taxes.

24 Q. I want to ask you some questions  
25 about the overall approach to damages that

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2 you've used in this case. And, as I understand  
3 your approach for both hypothetical leases with  
4 AMCK and the actual leases that were entered by  
5 Frontier with other leasing companies, you have  
6 determined all of the cash flows associated  
7 with those leases and discounted them back to  
8 an early date using a discount rate.

9 Have I described your approach  
10 correctly?

11 A. Mostly. I would -- I did calculate  
12 the cash flows associated with the actual  
13 leases and the -- you know, what the leases  
14 would have been. I did -- as I mention in my  
15 report, there were some aspects of the leases  
16 that could have -- that had the potential to  
17 affect cash flows, but I didn't have sufficient  
18 information to put a number on it.

19 Things like the early termination  
20 provision in the AMCK lease or, you know, some  
21 of the provisions relating to sharing of  
22 airworthiness directive cost.

23 Q. So some elements may have been  
24 omitted because you didn't have perfect  
25 information.

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1  
2 But was your approach to try to  
3 capture all of the cash flows and then to  
4 discount them back using a discount rate to a  
5 certain date?

6 A. That's correct.

7 Q. And under that approach, you treat  
8 all cash flows the same way regardless of  
9 whether they occurred in the past or are  
10 expected to occur in the future; is that right?

11 A. That's right.

12 Q. Have you used the same approach for  
13 your other cases that involve past and future  
14 cash flows?

15 A. I have. I mean, to the extent that  
16 I'm taking past and future cash flows into  
17 account in the calculations, I do.

18 Q. So you've consistently used that  
19 approach for the three pharmaceutical cases  
20 that we've talked about; is that right?

21 A. Yes.

22 Q. Would you agree with me, though,  
23 that there is a difference between past cash  
24 flows that have already occurred and future  
25 cash flows in terms of the precision with which

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those up, and it comes to 33.9 million,  
correct?

A. That's right.

Q. Okay. And then for this chart,  
table 17, this is the one that's based on your  
debt-based discount rates, correct?

A. That's correct.

Q. On the next page, table 18 there's a  
similar chart that's based on your weighted  
average cost of capital discount rate, correct?

A. Yes.

Q. Okay. So going back to table 17,  
you add up all those figures, which are the  
figures, I guess, that, if the Court was  
awarding damages, you would say that's the  
amount of damages as of the date of your  
report; is that right?

A. Which number, again, are you  
referring to here?

Q. Well, 33 -- the 33.9 million figure.  
Is that the --

A. That's the after-tax damages --

Q. That's what I'm trying --

A. -- as of the date of my report.

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1  
2 Q. That's what I'm trying to  
3 understand.

4 Is that after tax, and then you  
5 apply a tax rate of 22.8 percent to come to a  
6 larger number? Let me try to unpack this.

7 So I take it from this chart you  
8 believe the -- based on your debt-based  
9 discount rate you believe that, as of  
10 September 9, the date of your report, the Court  
11 should award total damages of 43.9 million; is  
12 that correct?

13 A. That's correct.

14 Q. But based on your effective tax rate  
15 of 22.8, Frontier is going to owe taxes on that  
16 amount of \$10,000; is that right?

17 A. 10 million.

18 MR. HOSENPUD: Object to form.

19 Q. \$10 million. I'm sorry.  
20 \$10 million. And that means that --

21 A. Well, let me put it -- actually, let  
22 my change that a little bit. I think -- you  
23 know, let me explain it. I think what's shown  
24 in line 6 is the after-tax damages to Frontier.  
25 And then, to make Frontier whole, you know,

C E R T I F I C A T E

STATE OF NEW YORK )

: ss

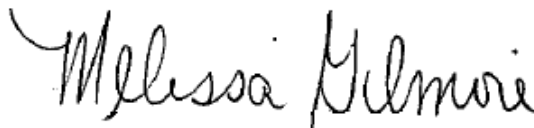
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public  
within and for the State of New York, do hereby  
certify:

That KEVIN NEELS, the witness whose  
deposition is hereinbefore set forth, was duly  
placed under oath by me and that such  
deposition is a true record of the testimony  
given by such witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of November, 2022.



MELISSA GILMORE